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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

THE FIFTIETH ANNIVERSARY OF THE ADOPTION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Written statement submitted by Indian Movement Tupaj Amaru and Indigenous World Association, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 June 1998]

THE RIGHTS OF INDIGENOUS PEOPLES IN THE SPIRIT OF THE UNVERSAL DECLARATION

Background to the Declaration

1. At the threshold of the twenty-first century, the international community as a whole, and minorities and indigenous people in particular, are preparing to celebrate the fiftieth anniversary of the Universal Declaration of Human Rights, which was solemnly proclaimed by the United Nations General Assembly, meeting at the Palais de Chaillot in Paris on 10 December 1948.

2. The commemoration of that historical date requires us to take a lucid and objective look at how human rights have developed in time and place. It encourages us to examine our own behaviour where respect for others is concerned honestly and critically. It is our opportunity to ask the collective conscience of the world to assess the record of the Declaration in the last 50 years.

3. Despite the many criticisms that have been levelled at the Universal Declaration, from different circles, for its often selective implementation, inconsistent interpretation and legal weakness, this unprecedented legal and standard-setting instrument embodies man's highest aspirations, is a source of inspiration for everyone fighting for the right to life and dignity and provides the principal legal foundation for respect for all the rights to which all peoples are entitled.

4. Because of its moral force, political vitality and legal scope, the Declaration has been acclaimed in all corners of the world and at all levels of society, by vanquished and colonized peoples, workers on strike, persecuted trade unionists, imprisoned freedom fighters, excluded minorities and aboriginal populations subjected to racial discrimination and genocide.

5. The father of the Declaration, Professor René Cassin of France, accurately summarized its historical significance, moral value and legal scope when he wrote, "It has a very great moral value, it is a beacon for people's hopes and a platform for action by civic associations" (Défense Nationale, vol. 45, January 1989, p. 74). Professor Cassin was also thinking of this symbol of what the international community understands "human rights" to mean when he strongly emphasized the right of every person to rebel, to resist, to fight oppression and tyranny, neocolonialism and xenophobia, in order to preserve the rights and freedoms under threat by the blind forces of the market economy.

6. On this occasion, we must bear in mind that all the declarations ever proclaimed on the meaning of human existence go far back in history, to ancient times, if not primitive societies, back to that crucial moment when man stood apart from the animal world and became a thinking being capable of reason.

7. All human beings are born free and equal in dignity and rights; no one need become so. As fate would have it, however, at a historically determined phase in the development of our ancient civilizations, the concept of private

property arose, legitimized by "natural" law: ownership of the work tools created by man's ingenuity and of the plot of land which he cultivated and hunted on according to his needs.

8. With private property, the violation of rights and freedoms was born. Primitive societies, based on collective labour and the equitable division of wealth, collapsed under a system characterized by a division of classes in constant mutual struggle: slaves and slaveowners, serfs and fuedal lords, workers and capitalists. From that fatal instant until today, man has been "a danger, in perpetual danger".

9. Yet it took the conflagration of two world wars, which claimed the lives of generations, inflicted suffering, terror and death on all of humankind and reduced to ashes the right to life, for the international community to admit its mistakes and take steps to ensure that peoples would never again sink into barbarity.

10. The tragedy of the Second World War goes a long way towards explaining why the international community, especially the victorious States, was convinced of the urgent political need to draw up a human rights charter which would "save succeeding generations from the scourge of war" (Charter of the United Nations, first preambular paragraph).

11. In that historical context, the 1948 Universal Declaration of Human Rights symbolizes the victory of the human being, human freedom and human dignity over Nazi totalitarianism, over an ideology based on racial segregation and total disregard for the right to life.

12. This universal legal instrument did not happen by chance, but was the result of a lengthy and dogged struggle by oppressed and colonized peoples. It was no accident that the framers of the Declaration based their analysis on and took their inspiration from the Declaration of the Rights of Man and of Citizens of 1789, the Declaration on Rights and Duties of States, proclaimed between 1916 and 1922 by the American Institute of International Law, and the Atlantic Charter, signed in August 1941 by the President of the United States and the British Prime Minister.

Universal concept

13. In an irony of history, the 1948 Universal Declaration was neither a treaty nor a convention, but simply a "common standard of achievement for all peoples and all nations" (last preambular paragraph). According to a liberal interpretation, the proclamation of a symbolic text with the loftiest and most distant vision entails nothing more than a moral obligation for the States drafting it.

14. Fifty years after the proclamation of that universal instrument, which placed the individual and his personality at a high level nationally and internationally, the concept of the universality, indivisibility and interdepence of human rights is being subjectively interpretated and selectively implemented, increasingly challenged by some, while defended by others.

15. For critics of the universal concept, the Declaration proclaimed 50 years ago is a moral instrument which lacks the legal force of a convention or multilateral treaty. As this argument goes, the 1948 Declaration is only a resolution, with no binding legal value for the Member States of the United Nations family (Revue des sciences morales et politiques, vol. 144, 1984, p. 384).

16. For the proponents of the principles of universality, indivisibility and interdependence, as reaffirmed by the World Conference on Human Rights, the 1948 Declaration is universal in both content and legal value because it is directly derived from the noble ideal stipulated in the Charter of the United Nations and enshrined in all the international instruments.

Scope

17. The 1948 Universal Declaration (30 articles, adopted by 48 votes to none, with 8 abstentions), which was arrived at through political and diplomatic compromise, was compared by Professor Cassin to an immense temple portico held up by four columns of equal importance.

> The first column is that of personal rights and freedoms (arts. 3-11): life, liberty and security of person, equal protection of the law, guarantees against slavery, torture and arbitrary arrests and punishment.
>
> The second column represents the rights of the individual in his relations with the society of which he is a member (arts. 12-17).
>
> The third column is that of thinking processes, civil liberties and basic political rights (arts. 18-22).
>
> The fourth column is that of economic, social and cultural rights (arts. 22-27).
>
> The last articles, 28 to 30, establish a direct relationship between the national and international spheres, i.e. a connecting wall between the individual and society (see Académie de droit international, Recueil des cours, 1951, vol. II, p. 278).

18. Whatever the controversy surrounding the concept of universality, whether a moral force or a legal force giving rise to an obligation, we have found that there is a double standard where the implementation of a so-called universal instrument is concerned.

19. A half-century of experience has shown us how much its provisions are applied in a selective, discriminatory and unfair manner towards third world peoples, particularly nations struggling for their right to self-determination, and aboriginal minorities and populations throughout the world, who are today more than ever being deprived of their fundamental rights, despoilt of their land, subjected to racism and racial discrimination and doomed to extreme poverty and rural exodus. The Declaration's framers took no interest in the situation of indigenous peoples, who are excluded from the community of nations.

20. The Declaration would not be universal if it did not apply, on the basis of the principle of equity and equality, to all members of the family of man and it would have no meaning if its provisions did not extend to all peoples without restriction or discrimination.

21. Fifty years after the adoption of the Universal Declaration of Human Rights, the record is disappointing: too many serious violations of fundamental rights are being committed with complete impunity against too many people, especially indigenous peoples, who are the most disadvantaged and the target of the most discrimination in too many countries. Such violations are increasingly cloaked in reasons of State, the so-called threat to national sovereignty or interference in internal affairs.

22. Can we conceivably accept the following interpretation: human rights violations are a "domestic" matter; we cannot interfere in the internal affairs of States; each State is free to violate individual and community rights and freedoms up to the point where those violations become a threat to international peace and security? Such a deliberately selective interpretation is based on cynism, selfishness, political hypocrisy and, especially, the strategic interests of the major Western Powers.

23. In a unipolar world, the United States of America, aware that it is the only economic and military Power on Earth, imposes on the peoples of the third world its particular vision of democracy, its model of development and its conception of human rights as absolute and universal world values. American hegemony is reflected in the world Power's total domination in the following six fields: economic, political, military, technological, audio-visual and human rights. Convinced that it has a mission to fulfil on the world scene, America subjugates the world as no empire has ever done in the history of mankind.

24. The temptation is strong for the United States to marginalize the United Nations, act in the place of the Security Council and ignore the role of the International Court of Justice in the peaceful settlement of regional and international disputes.

25. Each year the administration in Washington is forced to devise a sort of human rights diplomacy that will enable it, as necessary, to justify itself and its selective and discriminatory policy against Blacks, Indians, the Latino community, etc. or to denounce, accuse or single out Governments it suspects of human rights violations and even terrorism. The defendant's bench in the Commission on Human rights is often occupied by developing countries which do not conform to American dictates.

26. The human rights issue in North-South relations is being misused by the Western Powers, beginning with the United States, either as a political and diplomatic weapon or as a means of economic and ideological coercion designed to subvert or destabilize a sovereign State by means of economic blackmail (embargos, blockades) and political pressure that does not stop short of military intimidation in an effort to condemn the regimes it feels are a threat to its "vital interests".

27. And so 50 years after the Universal Declaration was solemnly proclaimed, the marble portico is turning into a magnificent facade behind which piles of resolutions lie sleeping in archives; little by little, the door closes, barring entry to the temple of human rights for the disadvantaged and the excluded. The Declaration cannot be universal if this temple of frosted glass, concrete and cold marble does not open its doors to all peoples without distinction or discrimination, especially to the marginalized minorities and aboriginal nations of the so-called universal community and to the victims of gross and systematic violations of their fundamental rights.

28. Viewed in the context of the new international economic order based on neoliberal conventional wisdom - the driving force behind the globalization of the economy - this historical instrument of moral stature has not stood the test of time, but has been left behind by the economic and political events which have taken place throughout the world. Its provisions are no longer equal to the challenge of the law of market forces.

29. At a time when the awakening of a chauvinistic and primitive nationalism with racist connotations is tearing the world apart, perpetrating individual and collective genocide and becoming an increasing threat to peace, the establishment of an international human rights court or a criminal court to try cases involving serious violations of fundamental rights and freedoms is an urgent necessity.

30. When economic and military Powers use international law ruthlessly to sacrifice scapegoats on the altar of a new world order, a system-wide democratization of the United Nations is more necessary than ever; it should begin with the elimination of the veto enjoyed by the permanent members of the Security Council, the body primarily responsible for the maintenance of international peace and security.

31. The celebration of the fiftieth anniversary of the Universal Declaration of Human Rights offers an ideal opportunity for the international community to conduct a thorough review - a requirement in this day and age - of all its provisions to adapt them to economic and political changes, i.e. to bring them into step with history if the serious challenges of the third millennium are to be effectively met.

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